

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

H2B
Jth.
PATENT
Docket No. 55019US002
(formerly 55019 USA 1A)

Applicant(s): F. Andrew UBEL et al.

Group Art Unit: 3728

Serial No.: 09/551,706

Examiner:

Troy Arnold, III

Confirmation No.: 2678

Filed: 18 April 2000

For: APPARATUS AND METHODS FOR PACKAGING AND STORING
MOISTURE-SENSITIVE PRODUCTS IN RESEALABLE POUCHES

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GROUP 3700

COMMUNICATION

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Applicants received an Office Action dated 22 August 2002 in the above-identified application ("the '706 application"). Attached herewith is a copy of the Office Action as provided by the U.S. Patent and Trademark Office.

Upon review of this communication, applicants discovered that, while the cover page identifies the '706 application, the subsequent pages appear directed to another matter (Ser. No. 08/827,976, the "976 application"). Applicants' Representatives left a voice-mail message for Examiner Arnold on two occasions in an effort to resolve this discrepancy but, as of the date of this communication, it remains unresolved.

Communication

Serial No.: 09/551,706

Filed: 18 April 2000

**For: APPARATUS AND METHODS FOR PACKAGING AND STORING MOISTURE-SENSITIVE PRODUCTS
IN RESEALABLE POUCHES**

Accordingly, Applicants request that, if any action is currently outstanding in the '706 application, it be re-sent and Applicants be given a new time period in which to respond. Alternatively, if the attached Office Action was sent in error, Applicants request that a communication stating the same be mailed to Applicants address of record.

Please direct any inquiries to the undersigned attorney.

CERTIFICATE UNDER 37 C.F.R. § 1.8:

The undersigned hereby certifies that this paper is being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Assistant Commissioner for Patents, Washington, D.C. 20231, on this 8th day of October, 2002, at 106 p.m. (Central Time).

Rachel Engel-Gastan
Name: Rachel Engel-Gastan

Respectfully submitted for

F. Andrew UBEL et al.

By

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PATENT TRADEMARK OFFICE

By:

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Date

08 Oct. 2002

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/551,706	04/18/2000	F. Andrew Ubel	55019 USA-1A	2678

7590 08/22/2002

Attention: Stephen W Bauer Esq
 Office of Intellectual Property Counsel
 3M Innovative Properties Company
 P O Box 33427
 St Paul, MN 55133-3427

EXAMINER

ARNOLD III, TROY G

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 08/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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 SUBMITTED FOR REHEARING APPEALS
 AND INTERFERENCES

Office Action Summary	Application No.	Applicant(s)
	08/827,976	SPERRY ET AL
	Examiner	Art Unit
	Shian T. Luong	3728

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 15 January 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 60-62,67,70-76,80-84 and 86-89 is/are pending in the application.

4a) Of the above claim(s) 60-62,67,72,73,75,76,80,88 and 89 is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 70,71,74,86 and 87 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-848)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____

6) Other: _____

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Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 70 and 86 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Pitts and Butler in the manner affirmed by the Board of Patent Appeals and Interferences, further in view of Davis (US 4,949,529) and Lookholder (4,620,633). Pitts as modified by Butler does not discuss the barrier material coated with metal foil. But as discussed in the previous Office Action, Davis teaches two embodiments of laminated bag or envelope, one using "a ply 70 of 48 ga. metallized polyester laminated to a ply 72 of 60 ga. Nylon", column 5, lines 15-16 and the second using "a foil layer 76, laminated to a ply 72' of 6090 nylon", column 5, lines 24-25. Lookholder teaches a foam filled shipping envelope made of "metallized 'Mylar' ester-based film", column 2, line 51. Both Davis and Lookholder make it clear that it was old and conventional to use barrier materials that included plastic film coated with metal in a pouch that requires moistureproof or gas impermeable characteristic. As is evident from the disclosure, the invention of Pitts should be constructed of almost any material that is rupturable, somewhat pliable and chemically inert to the components. This included rubber, plastic film or metal foil as stated on column 4, lines 56-67. Plastic film coated with metal was commonly used in this art to provide an improved barrier to the passage of oxygen and moisture through the bag wall. This allowed the packaged product to have a longer shelf life before being deleteriously effected and also allowed the user to package materials which were more desirable but were also more

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susceptible to the oxygen or moisture. Therefore, it would have been obvious to one of ordinary skill in the art in view of Davis and Lookholder to include a plastic film coated with metal in the barrier material of Fitts as modified in the prior rejection to better protect the packaged foam precursor. Applicant argues that the Examiner has not identified nor referred to any "evidence" to utilized metal foil in foam precursor cells. However, Davis and Lookholder are not combined for the purpose of their content, but they are combined for the suggestion of providing metal foil laminated material for a pouch that requires gas or moisture protection to extend the life of the pouch. Since Fitts wants a pouch that will keep the chemicals in an inert state until they are activated, the suggested laminated metal material from Davis and Lookholder will assist in that function. Applicant also argues that the formation of a frangible seal with metal foil and rubber is not possible. But applicant only claimed that the barrier material includes a plastic film coated with metal. It never claimed that the frangible material does not contain metal. Moreover, applicant's assertion with regard to impossibility of frangible seal with metal is unpersuasive. It would be within the skill level of one of ordinary skill in the art to determine the amount of adhesive or seal material for the barrier material to form a frangible seal.

3. Claims 71 and 87 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Fitts and Butler in the manner affirmed by the Board of Patent Appeals and Interferences, further in view of Dahlberg, Meyers, Moore and Lookholder (4,193,499). Fitts as modified by Butler does not discuss the barrier material coated with metal foil. But as discussed in the previous Office Action, Dahlberg teaches a mixing envelope made of "thermoplastic foil" in column 2, line 58. Thermoplastic foil in bag packaging is a metal foil layer to which a thermoplastic has been layered to permit seals to be formed by means of heat. Meyers teaches a frangible packaging

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envelope where the inner pouch 14 is "fabricated from a sheet of material 34 which includes a layer of metallic foil therein, such as laminate material of metallic foil, paper and a sheet of thermoplastic material in column 3, lines 52-55. Meyers also teaches that where it is desirable to provide an increased or different level of protection for one of the plastic gags because of its specific contents, the pouch should consists of "layers of paper, thermoplastic, metal foil and second layer of thermoplastic", column 4, lines 8-9. Moore teaches a plastic foam mixer made of sheet material "such as plastic film plastic sheeting, plastic coated paper, metal foil, or the like", column 3, lines 16-17. Lookholder'499 teaches another foam filled plastic shipping bag where one component of the inner wall of the package "is metal foil". All of the references above make it clear that it was old and conventional to use barrier materials that included plastic film coated with metal in a pouch that requires moistureproof or gas impermeable characteristic. As is evident from the disclosure, the invention of Fitts should be constructed of almost any material that is rupturable, somewhat pliable and chemically inert to the components. This included rubber, plastic film or metal foil as stated on column 4, lines 56-67. Plastic film coated with metal was commonly used in this art to provide an improved barrier to the passage of oxygen and moisture through the bag wall. This allowed the packaged product to have a longer shelf life before being deleteriously affected and also allowed the user to package materials which were more desirable but were also more susceptible to the oxygen or moisture. Therefore, it would have been obvious to one of ordinary skill in the art in view of Dahlberg, Meyers, Moore and Lookholder to include a plastic film coated with metal in the barrier material of Fitts as modified in the prior rejection to better protect the packaged foam precursor. Applicant argues that none of the secondary references are pertinent to the present invention. Yet Dahlberg

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et al, Meyers, Moore and Lookholder all suggest the use of metal or foil to prevent gaseous or moisture contact with the content. The same reason Fitts wants the foaming system in an inert state until are activated. Dahlberg is also relevant because it shows the mixing of two or more liquid or paste-like components inside a flexible plastic package.

4. Claim 74 is finally rejected under 35 U.S.C. 103(a) as being unpatentable over Fitts and Butler in the manner affirmed by the Board of Patent Appeals and Interferences, further in view of Meyers and Friemel (US 4,932,155). Fitts as modified by Butler does not discuss the heat sealing temperature. But as discussed in the previous Office Action, Meyers teaches a frangible packaging envelope where the inner pouch 14 is "fabricated from a sheet of material 34 which includes a layer of metallic foil therein, such as laminate material of metallic foil, paper and a sheet of thermoplastic material in column 3, lines 52-55. Meyers also teaches that where it is desirable to provide an increased or different level of protection for one of the plastic gags because of its specific contents, the pouch should consists of "layers of paper, thermoplastic, metal foil and second layer of thermoplastic", column 4, lines 8-9. Friemel teaches that in the art of packaged "sachets, i.e. relatively small bags or envelope-like pockets, made of a nonwoven thermoplastic sheet material", column 2, lines 4-5, it is often desirable to provide an inner layer of thermoplastic material which has a lower melting point than the melting point of the outer layer. This allows the inner layers of the bag to be fused at the thermoplastic layer with the higher melting point. This also permits formation of a good seal without damage to the desirable properties of the outer layer having the higher melting point. Therefore, it would have been obvious to one of ordinary skill in the art in view of Meyers and Friemel to form the barrier

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material of Fitts as a laminate of thermoplastics on either side of metal foil wherein the inner thermoplastic has a lower melting point to facilitate bonding of the bag.

Conclusion

5. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148 or the Tech Center 3700 Customer Service Center number is (703) 306-5648.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies

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of such papers should be directed to Valerie Douglas at (703)308-1337.

For applicant's convenience, the Group Technological Center FAX number is (703) 305-3579 or (703)305-3580. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (703) 308-2039. The examiner can normally be reached on M-TH 7:00 am until 4:00 pm (EST).

STL
August 21, 2002

Primary Examiner
Shian Luong
Art Unit 3728